

Murphy



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: V & Z Heating Corporation

File: B-224725

Date: October 20, 1986

DIGEST

1. Bid with a bid guarantee of 14 percent of the bid price, rather than the required 20 percent, is nonresponsive, and the bidder may not correct the deficiency by submission of performance and payment bonds after bid opening.
2. Second-low bidder may be allowed to revive its expired bid for purposes of receiving an award where a contract with the low bidder is canceled because of a defective bid guarantee and revival would not compromise the integrity of the competitive bidding system.
3. Entitlement to costs incurred under a canceled contract is a matter for resolution under the Contract Disputes Act of 1978, which establishes procedures for resolving such claims.

DECISION

V & Z Heating Corporation protests the award of a contract to Kem Construction Company under invitation for bids (IFB) No. N62472-85-B-3834, issued by the Department of the Navy for repair and reactivation of a heating system at the Armed Forces Reserve Center, Brooklyn, New York. V & Z was the low bidder and initially received a contract for the work. The Navy canceled the contract and made award to the second-low bidder when it discovered that V & Z's bid bond was for less than the amount required.

In accord with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.101-2 (1985), the IFB required a bid guarantee in an amount equal to at least 20 percent of the bid price. The amount submitted by V & Z was for about 14 percent of its bid price. A bid that contains a guarantee insufficient in amount is nonresponsive and cannot be accepted unless it meets certain exceptions not present here. FAR, 48 C.F.R. § 28.101-4; AVS Inc., B-218205, Mar. 14, 1985, 85-1 CPD ¶ 328.

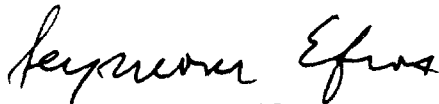
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V & Z argues that its submission of performance and payment bonds upon award of the contract "cured" the inadequate bid guarantee and any financial risk to the government. One of the reasons for the rule that bid guarantees must be provided before bid opening is that, otherwise, a bidder failing to submit a proper guarantee could decide after reviewing its competitors' bids at opening whether to cause its own bid to be rejected by refusing to submit the required guarantee. Ameron, Inc., B-218262, Apr. 29, 1985, 85-1 CPD ¶ 485. Thus, the FAR provides no exception to an agency's obligation to reject a deficient bid guarantee based upon submission of performance and payment bonds, and the Navy correctly concluded that awards to V & Z was improper.

The protester argues that Kem Construction was ineligible for an award after expiration of its original bid. Bidders may revive expired bids if to do so would not compromise the integrity of the competitive bidding system. Veterans Administration--Request for Advance Decision, 57 Comp. Gen. 228 (1978), 78-1 CPD ¶ 59; W. A. Strom Contracting, Inc., et al., B-216115, Dec. 26, 1984, 84-2 CPD ¶ 705. We find no reason to object to the award to the second-low bidder in this case merely because the firm's expired bid may have been revived.

Finally, V & Z claims that it incurred financial losses from commitments and expenditures made before cancellation of its contract. Incurrence of expenses under an improperly awarded contract does not make the agency's award in the first instance proper. The extent to which V & Z may recover its costs are matters for resolution under procedures established by the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (1982), and not by our Office. New England Telephone and Telegraph Co., 59 Comp. Gen. 746 (1980), 80-2 CPD ¶ 225; Ralph Construction, Inc., B-222162, June 25, 1986, 86-1 CPD ¶ 592.

We deny the protest.

for 
Harry R. Van Cleve
General Counsel